

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States
Department of Housing and Urban
Development, on behalf of
Earsell Collier, Jr.,

Charging Party,

and

Earsell Collier, Jr.,

Intervenor,

v.

Joe Ellis Joseph, Dell Woods,
and Tommy Woods,

Respondents.

HUDALJ 04-93-0306-1
Decided: August 30, 1994

Theresa L. Kitay, Esq.
For the Charging Party

Robert McDuff, Esq.
For the Intervenor

Davey L. Tucker, Esq.
For the Respondent

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

**INITIAL DECISION AND ORDER ON
APPLICATION FOR ATTORNEY FEES**

On July 21, 1994, Intervenor Earsell Collier, Jr., filed a Motion for Attorneys Fees and Expenses. He seeks \$7,805.75 in attorney fees and costs. Respondents have not filed any opposition to Intervenor's motion or to any of the amounts sought. HUD

attorney Theresa L. Kitay, who represents the Charging Party in this case, filed an affidavit fully supporting Intervenor's Motion.

Intervenor seeks fees for Robert B. McDuff, his attorney during this litigation, and for the attorney's law clerk, and for other expenses associated with the litigation.

Mr. McDuff filed an affidavit stating he expended 50.3 hours of work on the case at a rate of \$150 per hour, the asserted customary rate, for a total of \$7,545.

Mr. McDuff also states that his law clerk expended 3.6 hours of work at a rate of \$40 per hour, the asserted appropriate rate, for a total of \$144. Mr. McDuff asserts further that he expended \$116.75 in litigation expenses, including telephone, postage, and copying costs.

Applicable Law

The Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.* ("the Act"), provides that a prevailing party in an administrative proceeding is entitled to recover attorney fees. 42 U.S.C. § 3612(p); *see* 24 C.F.R. § 104.940. A prevailing party is one whose success on significant issues achieves sought after results. *See Busche v. Burkee*, 649 F.2d 509, 521 (7th Cir.), *cert. denied*, 454 U.S. 897 (1981); *see also Dixon v. City of Chicago*, 948 F.2d 355, 357-358 (7th Cir. 1991).

The burden of establishing the reasonableness of the requested rate, as well as the number of hours expended on litigation, is on the applicant. *Hensley v. Eckerhart*, 461 U.S. 424, 433, 437 (1983). A reasonable rate is the prevailing market rate in the relevant legal community. *Blum v. Stenson*, 465 U.S. 886, 895 (1984). An attorney's expertise is a consideration in determining the rate. *See id.* at 898.

An applicant must submit an accounting of the time expended on litigation, ordinarily including an affidavit providing dates and the nature of the work performed. *See Calhoun v. Acme Cleveland Corp.*, 801 F.2d 588 (1st Cir. 1986).

Discussion

Respondents were found to have violated the Act and assessed damages. Accordingly, Intervenor is a prevailing party and Respondents are liable for reasonable attorney fees and expenses. *See* 24 C.F.R. § 104.940(b).

Mr. McDuff provided an affidavit detailing the hours he spent working for Mr. Collier on Respondents' Fair Housing violations. Mr. McDuff also set forth the time worked by his law clerk and other litigation expenses. Considering Mr. McDuff's affidavit, which is

These and numerous cases cited in this decision are cases interpreting the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988 ("CRA Fees Act"). Cases interpreting the CRA Fees Act also apply to the Fair Housing Act. *See* 42 U.S.C. § 3602(o).

sufficiently detailed to allow me to draw a conclusion, I find that Mr. McDuff charged reasonable fees and expended reasonable hours, as did his law clerk, and that the litigation expenses were reasonable expenditures. In this regard I note Ms. Kitay's affidavit indicates that Mr. McDuff was helpful and that his work was not duplicative. Accordingly, I do not find Mr. McDuff's work duplicative.

Conclusion and Order

Accordingly, within 45 days the date this initial decision becomes final, Respondents are **ORDERED** to pay Intervenor a total of \$7,805.75 for Mr. McDuff (\$7,545 in attorney fees, \$144 in law clerk fees, and \$116.75 in litigation expenses).

SAMUEL A. CHAITOVITZ
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DECISION AND ORDER ON APPLICATION FOR ATTORNEY FEES issued by SAMUEL A. CHAITOVITZ, Administrative Law Judge, in HUDALJ 04-93-0306-8, were sent to the following parties on this 30th day of August, 1994, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

Robert B. McDuff, Esq.
771 North Congress Street
Jackson, MS 39202

Davey L. Tucker, Esq.
600 East Amite Street
P. O. Box 1261
Jackson, MS 39215-1261

Theresa L. Kitay, Esquire,
Office of Regional Counsel
U.S. Department of Housing and
Urban Development
688 Russell Federal Bldg.
75 Spring Street, SW
Atlanta, GA 30303-3388

INTEROFFICE MESSENGER:

Roberta Achtenberg, Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 5100
Washington, D.C. 20410

John Herold, Associate General Counsel
for Civil Rights and Litigation
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 10258
Washington, D.C. 20410

Harry L. Carey, Assistant General Counsel for Fair Housing
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 9238
Washington, D.C. 20410